

# PROCUREMENT POLICY

## IHBG and ICDBG Programs

*(Note: This is a model policy that may be used by Tribes and Tribally Designated Housing Entities (TDHE's) and is limited to the Indian Housing Block Grant Program (IHBG), the Indian Community Development Block Grant Program (ICDBG), and their implementing rules, regulations and statutes. If a tribe or TDHE administers any other programs other than the IHBG or ICDBG program, this model policy may be amended to include any procurement policy requirements specifically applicable to another program. But, the TDHE/TRIBE should ensure that the policy remains in compliance with the Native American Housing Assistance and Self-Determination Act (NAHASDA) and any other applicable federal, state, local, or tribal laws or regulations.)*

Established for the \_\_\_\_\_ **Name of TDHE/Tribe** \_\_\_\_\_ by Board/Council action on \_\_\_\_\_ **Date** \_\_\_\_\_. The effective date of this Statement is \_\_\_\_\_ **Date** \_\_\_\_\_.

This Statement of Procurement Policy complies with the Native American Housing Assistance and Self Determination Act of 1996, as amended, and the implementing regulations at 24 CFR 1000, 24 CFR 1003, and the procurement standards of 2 CFR 200.

### I. General Provisions

#### A. Purpose

The purpose of this Statement of Procurement Policy is to: (1) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the TDHE/Tribe; (2) assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the TDHE/Tribe; (3) promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and (4) assure that TDHE/Tribe purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and tribal laws.

#### B. Application

Per 2 CFR 200.318(a), the non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. Therefore, this Statement of Procurement Policy (Statement) applies to all contracts for the procurement of supplies, services, and construction entered into by the TDHE/Tribe after the effective date of this Statement. It shall apply to every expenditure of funds by the TDHE/Tribe

for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the TDHE/Tribe from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and the provisions of this Statement must be applied to the work financed by HUD; if it is not possible to separate the funds, the provisions of this Statement shall be applied to the total project.

The term "procurement," as used in this Statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of materials, supplies and equipment.

### C. Procurement Authority and Administration

1. Contracting Officer. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director (Tribal Administrator) or other individual he or she has delegated in writing, or such other individual specified by the Board/Council. The Executive Director (Tribal Administrator) shall issue operational procedures to implement this Statement. The Executive Director (Tribal Administrator) shall also establish a system of sanctions for violations of the ethical standards described in in this Statement.
2. Executive Director (Tribal Administrator) Duties. The Executive Director (Tribal Administrator) or his/her designee shall ensure that:
  - a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing. The annual plan should be completed by     Date     of each year;
  - b. Procurements and modifications are in writing, clearly specifying the desired supplies, services, or construction activity, and are supported by sufficient documentation, regarding the history of the procurement, including as a minimum the rationale for the procurement method chosen, the contract type, the rationale for selecting or rejecting offers, and for procurements in excess of the Simplified Acquisition Threshold, a price or cost analysis supporting the basis for the contract price;
  - c. For procurements other than small purchases, public notice is given of each upcoming procurement before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of          days for main construction contracts and          days for other contracts is provided for preparation and submission of bids or proposals; and notice of contract award is made available to the public;

- d. Solicitation procedures are conducted in full compliance with Federal standards stated in 2 CFR 200.320 and the Indian preference requirements at 24 CFR 1000.52;
- e. An independent cost estimate is prepared before formal solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;
- f. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted;
- g. A contract administration system is maintained to insure that contractors perform in accordance with their contracts, which provides for the proper inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

#### D. Cooperative Purchasing

The TDHE/Tribe may enter into State or tribal inter-governmental agreements to purchase or use common goods and services. The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on fostering greater economy and efficiency. If used, the inter-governmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. TDHE/Tribe is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

#### E. Specifications and Scopes of Work

1. **General.** All specifications and scopes of work shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying the TDHE/Tribe needs. Specifications and scopes of work shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Section V below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
2. **Limitations.** The following specification and scope of work limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection

factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the TDHE/Tribe needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State, tribal, or local licensing laws. Specifications and scopes of work shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the TDHE/Tribe computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

## F. Assistance to Small and Minority Businesses

1. **Required Effort.** The TDHE/Tribe must make good faith efforts to ensure those small businesses and minority-owned businesses, women’s business enterprises, and individuals or firms located within or owned in substantial part by persons residing in the area of a TDHE/Tribe project are used when possible. Such efforts shall include, but shall not be limited to:
  - a. Including such firms, when qualified, on solicitation mailing lists;
  - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
  - e. Using the services and assistance of the Small Business Administration;
  - f. Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in a. through e. above.

## G. Contract Clauses

1. **Required causes.** In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200.326 and Appendix II to Part 200, such as the following:
  - a. administrative, contractual and legal remedies when contractor violates or breaches contract (Contracts over small purchase threshold)
  - b. termination for default and termination for convenience (Contracts over \$10,000)
  - c. Equal Employment Opportunity

- d. Davis-Bacon Act and Copeland “Anti-Kickback” Act (or Tribally-Determined Wage Rate requirements, if applicable).
  - e. Contract Work Hours and Safety Standards Act
  - f. Rights to Inventions Made Under a Contract or Agreement
  - g. Clean Air Act and Federal Water Pollution Control Act
  - h. Debarment and Suspension
  - i. Byrd Anti-Lobbying Amendment
  - j. Procurement of recovered materials
2. **Forms.** If all required clauses are not included on forms (e.g., Form HUD 5370), then the TDHE/Tribe shall attach any additional clauses to the forms used in contract documents and shall include the contract clauses and solicitation notices for Indian preference described above.

## H. Contract Types and Options

1. **Contract Types.** Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the TDHE/Tribe may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the HUD-approved form of contract. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the TDHE/Tribe needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.
2. **Options.** Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the TDHE/Tribe; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the 'Options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the TDHE/Tribe than conducting a new procurement.

## II. Indian Preferences and Section 3

### A. Indian Preference

1. Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)), which provides for Indian preference, shall apply to all procurement in excess of the micro-purchase threshold funded in with NAHASDA funds. In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA. In the absence of tribal employment and contract preference laws, the TDHE/Tribe shall, to the greatest extent feasible, give preference in the award of all contracts and subcontracts, and in training and employment to Indian organizations and Indian owned economic enterprises.
2. All preferences shall be publicly announced in the IFB and RFP and the bidding or proposal documents. Efforts to provide Indian preference must be documented. If Indian preference is not feasible, TDHE/Tribe shall document in writing the basis of its finding of infeasibility and maintain the documentation in its files for three (3) years after the end of the program year during which the funds were expended.
3. Contractors applying for eligibility for Indian preference shall submit the following:
  - a. Evidence showing that the majority ownership of the firm consists of one or more persons who are members of a federally recognized Indian tribe. A certificate of Indian blood or census card from each owner will suffice.
  - b. Evidence showing that the owners claiming tribal membership are actively involved in the management of the firm, and participate proportionately in the profits. A statement from the owners will suffice.
  - c. Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest.
4. If the TDHE/Tribe or its prime contractor determines an applicant ineligible for Indian preference, the TDHE/Tribe or prime contractor shall notify the applicant in writing before contract award.
5. Solicitation notices shall include the following information:
  - a. The TDHE/Tribe shall incorporate the following clause (referred to as the section 7(b) clause) in each solicitation and included in all contracts and subcontracts, as follows:

- (1) The work to be performed under this contract is subject to Section 7(b) of the Indian Self-Determination Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations or Indian-owned economic enterprises.
  - (2) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.
  - (3) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
  - (4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the TDHE/Tribe or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.
- b. A statement as to whether the TDHE/Tribe maintains lists of Indian owned economic enterprises and Indian organizations by trade specialty that are available to contractors and subcontractors for use in meeting Indian preference responsibilities;
  - c. A statement that requires contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions;
  - d. A statement that requires the TDHE/Tribe to submit a list of core crew employees, if available, and that contractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions.
6. Methods of Providing Indian Preference
- a. **For purchases below the Micro Purchase Threshold**, per 24CFR 1000.52(d), the tribe/TDHE is not required to use Indian Preferences for purchases under the Micro-Purchase Threshold (\$5,000 or such lesser amount adopted by the tribe/TDHE).
  - b. **For purchases at or above the Micro-Purchase Threshold, but below the Simplified Acquisition Threshold**, the TDHE/Tribe shall seek maximum participation by Indian-owned economic enterprises and shall to the extent available, refer to lists of qualified Indian supply sources. If no quotation are solicited or received from Indian-owned economic enterprises, the TDHE/Tribe must include as part of its documentation a statement explaining the reasons for lack of Indian participation. As an alternative, a TDHE/Tribe solicitation may

be unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit quotes and an award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive quote, if the quote is within ten percent of the lowest non-Indian quote and the price is determined reasonable. If no responsive quotation by a qualified Indian-owned economic enterprises or organizations is within ten percent of the lowest non-Indian quote, award shall be made to the source with the lowest quote.

An optional method of providing Native Preference, the “X-Factor”, is provided as an appendix to this policy.

- c. **For sealed bids**, the TDHE/Tribe prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the TDHE/Tribe may select any one of the methods below, as follows:

- (1) Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit bids and award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive bid, if the bid is within the total maximum contract price established for the procurement and within the applicable range specified in Appendix A of the lowest non-Indian bid price; or
- (2) Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or
- (3) Use a two stage preference procedure, as follows:

**Stage 1.** Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

**Stage 2.** If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.

An optional method of providing Native Preference, the “X-Factor”, is provided as an appendix to this policy.

- d. **For competitive proposals**, the TDHE/Tribe prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the TDHE/Tribe may select any one of the methods below, as follows:

- (1) Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit proposals and establish a percentage or number of points set aside for Indian preference as one of the evaluating factors to consider other than price; or
  - (2) Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or
  - (3) Use a two stage preference procedure, as follows:
    - Stage 1.** Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the Request for Proposals limited to Indian-owned economic enterprises.
    - Stage 2.** If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.
- e. If the TDHE/Tribe selects a method of providing preference, in b. or c. above, that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable cost, then the TDHE/Tribe shall:
- (1) Re-advertise the contract using any of the methods described above at b. or c. for sealed bids and competitive proposals respectively; or
  - (2) Re-advertise the contract without limiting the solicitation for bids or proposals to Indian-owned economic enterprises or organizations. This method does not provide Indian preference. By selecting this method, the TDHE/Tribe has determined that Indian preference is not feasible even after providing for Indian preference in accordance with 24 CFR 1000.52(a), i.e. no qualified Indian bidder(s) responded, or less than two of the bid(s) received from Indian bidders were approvable; or
  - (3) If one approvable bid or proposal is received, the TDHE/Tribe may request ONAP review and approval of the proposed contract and related justification and procurement documentation in accordance with 2 CFR 200.320(f)(3).
- f. **Monitoring and Remedies.** The TDHE/Tribe shall monitor the implementation of Indian preference in its contracts, subcontracts, training, and employment, and take appropriate remedial action to ensure compliance. If no bids or offers are received from Indian organizations and enterprises, the lack of participation and any reasons known by the TDHE/Tribe for lack of participation shall be documented in the procurement file.

## B. Section 3 of the HUD Act of 1968

1. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals. However, per 24 CFR 1000.42(c), recipients shall be considered meeting the section 3 requirements when they comply with employment and contract preference laws adopted by their tribe in accordance with section 101(k) of NAHASDA.
2. Definitions:
  - a. **Section 3 Business Concern** – 1) A business concern that is 51% or more owned by Section 3 residents, or 2). Whose permanent, full time employees include persons, at least 30% of whom are current Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or 3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in 1 and 2 above.
  - b. **Section 3 Resident** – 1) A public housing resident; or 2) An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is low-income or very low-income as defined by the Housing Act of 1937.
3. The recipient threshold requirements for Section 3 apply only to those Section 3 covered projects or activities for which the amount of assistance exceeds \$200,000. Covered projects are housing rehabilitation, housing construction, and other public construction projects.
4. All Section 3 covered contracts shall include the following clause (referred to as the section 3 clause):
  - a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual

- or other impediment that would prevent them from complying with the part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
  - d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
  - e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
  - f. Examples of efforts to offer training and employment opportunities to Section 3 residents and procurement procedures that provide for preference for Section 3 business concerns may be found under 24 CFR Part 135, Appendix to Part 135.
  - g. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
  - h. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)

agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

### III. Procurement Methods

#### A. Selection of Method

When satisfying its needs by procurement, the TDHE/Tribe shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. The TDHE/Tribe shall provide a rationale in its supporting documentation as to why it selected that particular method.

#### B. Micro-Purchase Procedures

1. **General.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$200.67 Micro-purchase). Any procurement not exceeding \$5,000 (IHBG Program) or \$3,000 (ICDBG Program) may be conducted in accordance with the micro-purchase procedures authorized in this section. A lower dollar amount may be used if desired or required to conform to tribal law. Contract requirements shall not be artificially divided so as to constitute a micro-purchase under this section, except as may be reasonably necessary in instances where breaking out such procurements can be shown to result in more economical purchases.
2. **Indian preference.** Not required per 24 CFR 100.52(d)
3. **Petty Cash Purchases.** Petty cash purchases should be kept to a minimum, since purchasing in limiting quantities does not provide for the best price and all administrative requirements under small purchases apply.
4. **Obtaining Quotes.** To the extent practicable, the tribe/TDHE must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable per 2 CFR 200.404.

#### C. Small Purchase Procedures

1. **General.** Any procurement not exceeding \$150,000 [insert a lower dollar amount if desired or required to conform to tribal law] may be conducted in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section V of this Statement or in instances where breaking out such procurements can be shown to result in more economical purchases).
2. **Indian preference.** See above Section II(A)(6)(a).

3. **Obtaining Quotes.** The TDHE/Tribe shall solicit price quotations by phone, letter, or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, the TDHE/Tribe shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The TDHE/Tribe shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within \_\_\_\_\_ days of the oral quotation or by the due date for submitting quotations. The names, addresses, and telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.
4. **Competition.** The TDHE/Tribe shall attempt to obtain quotations from a minimum of two (preferably three) qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least two quotations. Solicitation of fewer than two sources is acceptable if the TDHE/Tribe has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety). But would also need to be consistent with the requirements of 2 CFR 200.320(b).
5. **Award based on price.** For small purchases award is generally based on price and fixed specifications taking into account the method of providing Indian and Section 3 preferences.
6. **Blanket Purchase Agreements (BPA).** Once a BPA has been established, task or delivery orders can be placed without further competition. BPAs may be used for a variety of expendable supplies and services and are particularly attractive when the exact items, quantities and delivery requirements are not known in advance. The process to setup a BPA will save your TDHE/Tribe time and money while making your purchasing quicker and easier. Prior to following the small purchasing procedures established above, the TDHE/Tribe will have conducted an historical database on their re-occurring purchases. After obtaining an estimate on the volume or quantities of a list of products, the TDHE/Tribes use that information to solicit quotes or discount rates from a number of vendors. By using the purchasing power of greater quantities, the TDHE/Tribe secures better pricing. The maximum total value of the small purchase BPA is \$150,000.

#### D. Sealed Bidding

1. **Conditions for Use.** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.

2. Solicitations and Receipt of Bids.
  - a. **Issuance and amendments.** An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
  - b. **Indian Preference.** A TDHE/Tribe has several options to meet Indian preference requirements under §1000.52(a). The decision of what particular option to use should be made well in advance of the solicitation process and based on the potential availability of Indian-owned firms capable and willing to bid or propose on a particular contract.
    - (1) A TDHE/Tribe may develop and adopt policies and procedures in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Act, OR
    - (2) A TDHE/Tribe may restrict the solicitation to qualified Indian-owned economic enterprises and Indian organizations if the TDHE/Tribe has a reasonable expectation of receiving at least two bids, OR
    - (3) If a TDHE/Tribe is not sure there are a sufficient number of Indian owned economic enterprises or organizations available or that they will receive at least two bids, a TDHE/Tribe may use a two stage preference procedure as follows:

**Stage 1** – Invite or otherwise solicit from Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

**Stage 2** – If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.
3. **Bid Opening.** Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and made available for public inspection.
4. **Award.** Award shall be made to the lowest responsive and responsible bidders provided in the invitation for bids by written notice to the successful bidder, as follows:
  - a. **Restricted solicitations.** If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more [or a greater number determined by the TDHE/Tribe and stated in the invitation] qualified Indian

owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots or similar random method. If fewer than two responsive and responsible bids from qualified Indian-owned economic enterprises or organizations submit bids, the TDHE/Tribe shall evaluate its options to reject all bids, cancel the solicitation and re-advertise: 1. using any of the procedures in III(D)(2)(b) above, or 2. inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations with no preference given, or 3. the TDHE/Tribe may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the TDHE/Tribe determines that, based on a cost analysis, the bid price is fair and reasonable, and the TDHE/Tribe determines that the delay of re-advertising would subject the project to significant higher construction costs.

- b. **Unrestricted solicitations.** If the solicitation is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited, and the bid is within the range specified in the Attachment to this Statement. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.
5. Mistakes in Bids.
- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is clear or the bidder submits convincing evidence that a mistake was made.
  - b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the TDHE/Tribe or fair competition shall be permitted.

## E. Competitive Proposals

1. **Conditions for Use.** Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the TDHE/Tribe determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.
2. Solicitation.
  - a. **General.** The request for proposals (RFP) may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the TDHE/Tribe has a reasonable expectation of receiving offers from two [or a greater number stated in the RFP] such entities. The TDHE/Tribe shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian organizations if: the TDHE/Tribe prefers not to restrict the RFP; or, an insufficient number of qualified Indian--owned economic enterprises or Indian organizations satisfactorily respond to a restricted RFP; or, a single proposal is received but not accepted. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
  - b. **Evaluation Factors.** The RFP shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. TDHE/Tribe shall reserve \_\_\_\_% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to an additional \_\_\_\_% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
3. **Negotiations.** In those situations where deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

4. **Award.** After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the TDHE/Tribe, provided that the price is within the maximum total contract price established for the specific project or activity. For solicitations restricted to qualified Indian-owned economic enterprises and Indian organizations, if two [or a greater number stated in the RFP] such entities submit acceptable proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than this number of Indian-owned economic enterprises or Indian organizations submits acceptable proposals, the TDHE/Tribe shall reject all proposals and resolicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. The TDHE/Tribe may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when the TDHE/Tribe determines that the delays caused by resoliciting would cause higher costs, or where the TDHE/Tribe determines that the proposal has a fair and reasonable price.
5. **Architect Engineer Services.** Architect Engineer services in excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures, Sealed bidding shall not be used to obtain architect/engineering services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. These procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

## F. Noncompetitive Proposals

1. **Conditions for use.** Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
  - a. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the TDHE/Tribe, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or
  - b. Only one source of supply is available, and the Contracting Officer so certifies in writing; or

- c. After solicitation of a number of sources, competition is determined inadequate; or
  - d. HUD/ONAP specifically authorizes the use.
2. **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.
3. **Price reasonableness.** The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.

#### G. Cancellation of Solicitations'

1. An invitation for bids, request for proposals, or other solicitation may be cancelled before offers are due if: the TDHE/Tribe no longer requires the supplies, services or construction; or, the TDHE/Tribe can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to the TDHE/Tribe; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or, a condition for canceling a solicitation and resolicit, as specified above, is met; or, for good cause of a similar nature when it is in the best interest of the TDHE/Tribe.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited. A notice of cancellation shall be sent to all offerors solicited.

## IV. Cost and Price Analysis

### A. General

A cost or price analysis shall be performed for all procurement actions in excess of the Simplified Acquisition Threshold, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement. The TDHE/Tribe shall perform an independent cost or price estimate prior to receiving bids or proposals. A cost or price analysis may also be required for smaller purchases at the discretion of the tribe/TDHE.

## B. Price Analysis

A Price Analysis shall be conducted on any sealed bid prior to awarding a contract. The TDHE/Tribe shall perform a comparability of prices received in relation to the independent cost estimate, to ensure the price is reasonable and within funds budgeted.

## C. Cost Analysis

A Cost Analysis shall be conducted for all competitive proposals (e.g., when contracting for professional, consulting, or architect/engineer services), and for all noncompetitive proposals.

# V. Contractor Qualifications and Duties

## A. Contractor Responsibility

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the TDHE/Tribe shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other TDHEs/Tribes), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

## B. Bonding Requirements

1. **Minimum Requirements.** For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the TDHE/Tribe may implement bonding requirements different from the minimum federal requirements provided that HUD has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
  - a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a

contract to secure fulfillment of all the contractor's obligations under such contract.

- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2. **Exception** (see 24 CFR 1000.26(a)(11)(ii) for the IHBG Program and 24 CFR 1003.501(a)(13) for the ICDBG Program). There may be circumstances under which the bonding requirements specified above are inconsistent with other responsibilities and obligations of the TDHE/Tribe. In such circumstances, acceptable methods to provide performance and payment assurance may include:

- a. Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or
- b. Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

### C. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies (e.g., Department of Labor, for violations of Secretary of Labor Regulations) when necessary to protect the TDHE/Tribe in its business dealings. The TDHE/Tribe may suspend or debar a contractor under State, local or tribal laws, as applicable. Refer to System for Award Management (<https://www.sam.gov>) for additional information.

### D. Qualified Bidder's Lists

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products, which are used in the procurement of supplies and services, shall be kept current and shall include enough qualified sources to ensure competition. Lists of pre-qualified Indians, Indian enterprises, or Indian organizations may be maintained by the TDHE/Tribe. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.

### E. Qualifying Indian-Owned Enterprises & Indian Organizations

A TDHE/Tribe, at its discretion, may require prospective contractors seeking to qualify as Indian organizations or Indian owned economic enterprises to complete, or update if applicable, an Indian Enterprise Qualification Statement.

## F. Requiring Statements on Employment & Training of Indians

A TDHE/Tribe, at its discretion, may require prospective contractors and offerors (and their subcontractors, if required by the TDHE/Tribe) to provide a statement describing how they will provide Indian preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained.

## VI. Appeals and Remedies

### A. General

It is the TDHE/Tribe's policy to resolve all procurement and contractual issues timely and informally at the TDHE/Tribe level without litigation.

### B. Bid Protests

1. An unsuccessful bidder or offeror may file a written complaint (or protest) with the Contracting Officer within \_\_\_\_\_ calendar days from the date of TDHE/Tribe's notice to the unsuccessful bidder or offeror or from the date of the action (or omission) upon which the complaint is based. The complaint must be signed and shall detail the basis of the complaint. No untimely or oral complaint will be considered.
2. TDHE/Tribe need not suspend contract performance or terminate the award of the contract unless TDHE/Tribe determines, in its sole discretion, which it appears likely that the contract award will be invalidated and that a delay in receiving the supplies or services will not be prejudicial to TDHE/Tribe's interests.
3. Upon receipt of a complaint, the TDHE/Tribe shall promptly stamp the date and time of receipt on the complaint and acknowledge receipt of the complaint within \_\_\_\_\_ calendar days.
4. Within \_\_\_\_\_ calendar days of receipt of a complaint, the Contracting Officer shall meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Contracting Officer shall make a determination on the complaint within \_\_\_\_\_ calendar days of TDHE/Tribe's receipt of the written complaint. The decision of the Contracting Officer shall constitute the final administrative action on the complaint.
5. A complainant must exhaust all administrative remedies with TDHE/Tribe before pursuing a protest with HUD or other agency providing funds for the procurement.
6. Reviews of complaints by the Federal or other agency will be limited to:
  - a. Violations of Federal or relevant law or regulations and the standards of this Section; and
  - b. Violations of TDHE/Tribe 's complaint procedures for failure to review a complaint or protests.

7. Violations of Tribal law will be under the jurisdiction of the Tribal authorities.

### C. Contract Claims and Disputes

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the TDHE/Tribe, such as the Executive Director or a designated Board member, or a Procurement Appeals Board.

### D. Protests Involving Indian Preference

1. **General.** Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures in 24 CFR 1000.54.
2. The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part:
  - a. Each complaint shall be in writing, signed, and filed with the TDHE/Tribe.
  - b. A complaint must be filed with the TDHE/Tribe no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.
  - c. Upon receipt of a complaint, the TDHE/Tribe shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.
  - d. Within 20 calendar days of receipt of a complaint, the TDHE/Tribe shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The TDHE/Tribe shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the TDHE/Tribe. The decision of the TDHE/Tribe shall constitute final administrative action on the complaint.

## VI. Ethics in Public Contracting

### A. General

The TDHE/Tribe shall adhere to the following code of conduct governing the performance of their employees, officers or agents engaged in the award and administration of contracts consistent with applicable State, tribal, or local law, and shall comply with the limitations imposed by 2 CFR 200.318(c) and 24 CFR 1000.30.

### B. Conflict of Interest

1. No employee, officer or agent of this TDHE/Tribe shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
  - a. An employee, officer or agent involved in making the award;

- b. His/her immediate family member (as determined by the tribe/TDHE in its operating policies);
  - c. His/her partner, or,
  - d. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
2. Per 24 CFR 1000.30(b), no person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.
3. Employees, agents and grantees who may have acquired confidential and privileged information during their tenure with the TDHE/Tribe are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or any other financial interest, direct or indirect, in any TDHE/Tribe project or activity that is affected by that confidential or privileged information.
4. Per 24 CFR 1000.30(c), nothing in this section shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, or agent from fully participating in TDHE/Tribe activities and decision making so long as the person is low income and otherwise an eligible applicant and selected for assistance in accordance with the TDHE/Tribe's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds.
  - a. The TDHE/Tribe must make a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the person.
  - b. The TDHE/Tribe shall provide ONAP with a copy of the disclosure before the assistance is provided to the person

### C. **Gratuities, Kickbacks, and Use of Confidential Information**

TDHE/Tribe officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain. It is determined that providing meals, entertainment or gifts in an amount in excess of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per gift or meal, or a total per calendar year of meals, entertainment or gifts in excess of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per individual by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

**D. Prohibition against Contingent Fees**

Contractors shall not retain a person to solicit or secure a TDHE/Tribe contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

## Attachment A

### Using the X-Factor for Indian Preference (Optional)

The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 1000.52. Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

<b>When the lowest responsive, responsible bid is:</b>	<b>X = lesser of:</b>
Less than \$100,000	10% of that bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$15,000
At least \$500,000, but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000, but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000, but less than \$4,000,000	3% of that bid, or \$80,000

## Attachment B

### Procurement Analysis Form

The Procurement Analysis Form is to be used for all procurement done by the TDHE/Tribe. The purpose of this form is to document the basis for the selection of a particular vendor, and to document the reason(s) for the use of non-competitive procurement. This form needs to be completed as part of the request for payment for every individual purchase. A copy of this form should be attached to every invoice to be paid, and then filed with the payment.

**Item:** enter a description of the item(s) being purchased, for example “5 exterior doors” or “consultant services”.

**Vendor:** enter the name of the vendor.

**Basis of Selection:** check the appropriate box, either (1) Lowest price; or (2) Competitive proposals; or (3) Non-competitive purchase; or (4) State or federal contract purchase.

**Lowest Price:** enter the number of price quotes in the space provided. If less than two quotes received, this is a Non-competitive purchase, and you must check number 3 and complete the additional information. Check “price quotes attached” if this purchase is based on Lowest Price, but is not included in the annual procurement, or check “price quotes on file” if this purchase is based on Lowest Price and is part of the annual procurement.

**Competitive Proposals:** Check this box if the purchase is the result of a Request for Proposals. Attach a copy of the Contract with the invoice.

**Non-Competitive Purchase:** Check this box if there is only one quote submitted for the procurement (sole-source procurement). One of the four boxes must be checked to justify why only one quote was obtained. There can be no other justification for obtaining only one quote. In addition, the reasonableness of the price being paid must be documented by checking one of the following boxes and attaching the related documentation.

**Cost breakdown:** the vendor must supply a breakdown of his cost and estimated profit related to the purchase.

**Commercial pricing and sales information:** provide a copy of a catalog page, an advertisement, or some other documentation that demonstrates the price being charged is the same or less than the price being charged to the general public.

**Law or regulation:** provide a copy of a public document that prescribes a certain price be charged through the action of a public body.

**State or federal contract purchasing:** Check this box if the purchase is through the State or federal procurement process, such as for the purchase of vehicles. Attach a copy of the appropriate contract or purchase order the vendor has with the State or federal government.

**Micro Purchasing:** Check the appropriate box if the procurement is less than \$5,000 (for IHBG Program), \$3,000 (for all other Federal Programs), or the TDHE/Tribe threshold, whichever is less. Procurements cannot be separated to meet this threshold.

# Procurement Analysis

**Item:** \_\_\_\_\_

**Vendor:** \_\_\_\_\_

**Basis of Selection:**

- 1. **Lowest price** from among \_\_\_\_\_ price quotes.
  - Price quotes attached.
  - Price quotes on file.
- 2. **Competitive Proposals.** Copy of Contract attached.
- 3. **Non-Competitive Purchase** due to at least one of the following reasons:
  - The item is available only from a single source, based on a good faith review of available sources.
  - An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods and the emergency procurement shall be limited to those supplies, services or construction necessary to meet the emergency.
  - HUD has authorized the use of non-competitive proposals (attach written approval).
  - After solicitation of a number of sources, competition is determined inadequate.

To document the price-reasonableness of a non-competitive purchase, one or more of the following has been attached:

- A cost breakdown showing projected costs and profit.
  - Commercial pricing and sales information sufficient to enable the Housing Department to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public.
  - Documentation showing that law or regulation sets the offered price.
- 4. **State or federal contract purchasing.** Copy of contract attached.
  - 5. **Micro Purchase.**
    - IHBG Program:** Procurement is less than \$5,000, or lesser amount as determined by the TDHE/Tribe. No solicitation required and cost has been determined to be reasonable.
    - All other Federal Programs:** Procurement is less than \$3,000 or lesser amount as determined by the TDHE/Tribe. No solicitation required and cost has been determined to be reasonable.

\_\_\_\_\_  
Housing Director

\_\_\_\_\_  
Date

## Attachment C

### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

**EXCEPTIONS ICDBG Program:** per 24 CFR 1003, paragraphs (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) and (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) do not apply.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. **Contracts for more than the simplified acquisition threshold** currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. **All contracts in excess of \$10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage

determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. **This section does not apply to the ICDBG Program per 24 CFR 1003.501 and .603. It may also be waived for the IHBG Program if Tribally-Designated Wages are adopted by the tribe, per NAHASDA 104(b)(3).**

- E. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **This section does not apply to the ICDBG Program per 24 CFR 1003.501.**
- F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- G. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- J. **See §200.322** Procurement of recovered materials.